

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-cv-10573-RWZ

JOSEPH SCHMITT,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
CORRECTION, et al.,

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION

Defendants hereby oppose Plaintiff's Motion for Reconsideration, filed with this Court on February 26, 2007. As grounds therefore, defendants refer this Court to their arguments in their Motion to Dismiss, filed on August 31, 2006. This Court properly dismissed defendants Maloney, Allen, Grossi, Nolan, Kennedy, Thomas, Smith and Mulvey because Schmitt failed to make proper service within the time period required by the Federal Rules of Civil Procedure.

The Complaint in this case was filed on February 18, 2005. Several of the defendants dismissed by this court were not even served with the Complaint until after the filing of defendants Motion to Dismiss. At least three defendants, William Grossi, Peter Allen and Michael Maloney have still not been served. Fed. R. Civ. P. 4(m) requires service of the Complaint within 120 days of its filing. Schmitt's Motion for Reconsideration fails to explain why some defendants were served and not others. Schmitt's *pro se* status does not insulate him from compliance with the Federal Rules of

Civil Procedures. Fleming v. Magnusson, 52 F.3d 309 (1st Cir. 1995), citing FDIC v. Anchor Properties, 13 F.3d 27, 31 (1st Cir. 1994).

As such, Schmitt's Complaint was correctly dismissed against the aforesaid defendants for failure to comply with the Federal Rules.

Dated: March 6, 2007

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Jody T. Adams

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of the above document was served on plaintiff, pro se, via first class mail.

/s/ Jody T. Adams

Dated: 3/6/2007

Jody T. Adams, Counsel